

Message Text

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TO MARCONA CORP

1 MARITIME PLAZA

SAN FRANCISCO CAL 94111

UNCLAS STATE 177307

FOLLOWING REPEATS LIMA 6012 ACTION DEPT INFO TOKYO JULY 25TH

QUOTE

UNCLAS LIMA 6012

EO 11652: N/A

TAGS: EINV, EMIN, PFOR, PE, US, JA

SUBJECT: DECREE LAW NATIONALIZING MARCONA MINING COMPANY

REF: A) LIMA 5983; B) LIMA 5979

1. FOLLOWING IS UNOFFICIAL TRANSLATION OF KEY ARTICLES
OF D.L. 21228 SIGNED JULY 22, 1975, PUBLISHED IN PERUVIAN
OFFICIAL GAZETTE ON JULY 25.

A. PREAMBULAR PARAGRAPHS:

QUOTE...THAT THE MARCONA MAINING COMPANY-BRANCH
IN PERU HAS SERIOUSLY FAILED TO COMPLY WITH ITS CON-
TRACTUAL OBLIGATIONS SINCE THE TECHNICAL COMMISSION
NAMED BY MINISTERIAL RESOLUTION NO. 555-74-EM/DG HAS
FOUND THAT IR (MARCONA) HAS FAILED TO ESTABLISH EITHER
A TEMPORARY MINERAL RESERVE OR A NONEXPLOITABLE RESERVE,
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FUNDAMENTAL OBLIGATIONS WHICH ARE STIPLUATED IN THE
COLLATERAL CONTRACTS FOR THE DEVELOPMENT OF THE NATIONAL
STEEL INDUSTRY;

...THAT THE SAME COMPANY HAS FAILED TO UNDERTAKE THE EXPLORATION AND EXPLOITATION OF THE DEPOSITS IN ACCORDANCE WITH UNIVERSALLY ACCEPTED MINING PRACTICES; IT HAS ALSO USED UNACCEPTABLE TECHNIQUES IN ITS EXPLOITATION, SUCH AS FAILING TO SYSTEMATICALLY RENEW ITS MACHINERY OR TO MAINTAIN (THEM) IN GOOD CONDITION, FACTS DETERMINED BY MINEROPERU AND BY THE INTERNATIONAL CONSULTING AGENCY "BUEREAU DE RECHERCHE GEOLIGIQUE ET MINIERE."
...THESE ACTS HAVE SERIOUSLY HARMED THE ECONOMY OF THE NATION;

...THAT MARCONA MINING COMPANY ORGANIZED WITH SAN JUAN S.A. AND MARCONA INTERNATIONAL S.A. OF PANAMA, SAN JUAN CARRIERS S.A. AND MARCONA CARRIERS S.A. OF LIBERIA, ALL PART OF THE TRANSNATIONAL ENTERPRISE MARCONA CORPORATION, A TRADING SYSTEM AND MARITIME TRANSPORT SYSTEM OF MINERAL PRODUCTS COMPING FROM NATIONAL DEPOSITS, (A TRADING SYSTEM) WHICH HAS REDUCED INCOME TO THE COUNTRY IN THE CORRESPONDING CURRENCY, UNDER THE PRETEXT THAT ITS REAL PROFITS WERE CONTROLLED BY THE STATE, (THAT IT HAS) AVOIDED TAXES AND (THEREBY) PAYMENTS TO THE MINING COMMUNITY, AND THAT ALL THIS CONSTITUTES A GRAVE INJURY TO THE COUNTRY AND A VIOLATION OF THE NORMS OF PUBLIC ORDER:

...THAT THE FOREGOING ACTIVITIES WERE UNDERTAKEN WITHOUT FULFILLING ITS CONTRACTUAL OBLIGATIONS, SINCE MARCONA MINING UNDERTOOK TO SELL AND TRANSPERT MINING PRODUCTS WITHOUT OBTAINING THE NECESSARY AUTHORIZIONS FROM THE PERUVIAN CORPORATION DE LA SANTA OR FROM THE PERUVIAN GOVERNMENT;

...THAT THE FAILURE TO COMPLY WITH ITS CONTRACTUAL OBLIGATIONS CONSITUATES MOTIVE FOR THE PERMANENT ANNULMENT OF MARCONA MINING COMPANY'S (RIGHTS), GIVEN THE APPLICATION OF PARAGRAPH 10.4 OF THE TENTH CLAUSE OF THE CONTRACT BETWEEN THE SANTA CORPORATION WITH MARCONA MINING COMPANY
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OF DECEMBER 9, 1966, AND CONSEQUENTLY THE ACQUISITION FREE OF ALL PAYMENT (ADQUISICION LIBRE DE TODO PAGO) OF THE INSTALLATIONS AT SAN NICOLAS, IN CONFORMITY WITH SUBPARAGRAPH B OF SAID PARAGRAPH;

...THAT THE SPECIAL STUDY COMMISSION...NAMED NOVEMBER 8, 1974, HAS DETERMINED THAT (MARCONA'S PROPOSAL) IS UNACCEPTABLE AND THAT, TO SAFEGUARD THE NATIONAL INTEREST, IRON EXPLOITATION SHOULD NOT REMAIN IN THE HANDS OF A PRIVATE COMPANY;

...THAT TO SAFEGUARD THE NATIONAL INTERESTS, THE STATE MUST CEASE PREJUDICIAL CONTRACTUAL RELATIONSHIPS

TO ASSURE THE DEVELOPMENT OF THE IRON AND STEEL INDUSTRY
OF THE COUNTRY;

IN CONFORMITY WITH ARTICLE 5 OF THE STATUTE OF THE
REVOLUTIONARY GOVERNMENT OF THE ARMED FORCES, D.L. 17063
AND ARTICLE 29 OF THE CONSTITUTION THE COUNCIL OF
MINISTERS PROMULGATES THE FOLLOWING DECREE LAW:

ART. 1. THE NATIONALIZATION OF THE MINING-METALLUR-
GICAL COMPLEX OF THE MARCONA MINING COMPANY-PERUVIAN
BRANCH IS HEREBY DECLARED TO BE NECESSARY AND IN THE
PUBLIC INTEREST;

ART. 2 GIVEN THE FOREGOING ARTICLE, THE PROPERTY
OF THE MARCONA MINING COMPANY-PERUVIAN BRANCH NECESSARY
FOR THE OPERATION OF THE ...COMPLEX BY THE STATE IS
EXPROPRIATED, WITHOUT PREJUDICE TO ART. 8 BELOW OF THE
PRESENT D.L....(FURTHER) THAT THE SPECIAL RIGHTS OF
THE STATE "C.P.S. 1" AND THE RIGHTS TO ALL THE REMAINING
STATE PROPERTY UNDER WHATEVER TITLE MAY BE IN POSSESSION
OF MARCONA MINING COMPANY REVERT TO THE POSSESSION OF
THE STATE...

ART. 3. THE MINISTRY OF ENERGY AND MINES IS CHARGED
WITH TAKING POSSESSION OF THE AFOREMENTIONED PROPERTY.
...AND TO UNDERTAKE THE ADMINISTRATION, TO ARRANGE FOR
ITS EVALUATION, AND TO BEGIN THE CORRESPONDING PROCESS
OF EXPROPRIATION(...ASUMIR SU ADMINISTRACION, DISPONER
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SU VALORIZACION E INICIAR EL CORRESPONDIENTE PROCESO DE
EXPROPIACION).

ART. 4. ...UNTIL THE APPROPRIATE LAW OF
THE STATE ENTERPRISE IS PROMULGATED. ...(THE COMPANY)
WILL BE ADMINISTERED BY AN OFFICIAL ADMINISTRATOR NAMED
BY SUPREME RESOLUTION. ...THE ADMINISTRATOR WILL BE
RESPONSIBLE TO THE MINISTER OF THE SECTOR.

ART. 5. THE STATE PROPERTY ...WILL BE NAMED
"EMPRESA MINERA DEL HIERRO DEL PERU (HIERROPERU). ...

ART. 6. THE ECONOMY AND FINANCE SECTOR WILL MAKE
AVAILABLE NECESSARY FINANCIAL RESOURCES ...FOR THE
NORMAL FUNCTIONING OF THE ENTERPRISE. ...

ART. 7. (NOT RELEVANT.)

ART. 8. THE EXPLORATION, DEVELOPMENT, AND EXPLORATION
CONTRACTS BETWEEN THE PERUVIAN CORP. DE SANTA AND THE
UTAH CONSTRUCTION COMPANY OF FEBRUARY 7, 1951, AND
NOVEMBER 7, 1952, AND THE SUBSEQUENT CONTRACTS WHICH

MODIFY THEM, SIGNED WITH MARCONA MINING COMPANY ARE
HEREBY DECLARED RESCINDED AND WITHOUT LEGAL EFFECT.
(FURTHER) HIERROPERU AS THE REPRESENTATIVES OF THE STATE
HEREBY RECEIVES, FEE OF PAYMENT, THE INSTALLATIONS AT
SAN NICOLAS (ADJUDICASE A HIERROPERU EN REPRESENTACION
DEL ESTATE, LIBRE DE TODO PAGO, LAS INSTALACIONES DE
BENEFICION DE SAN NICOLAS).

ART. 9. IT IS HEREBY DECLARED THAT THE CONTRACT OF
DECEMBER 1, 1966, BETWEEN MARCONA MINING COMPANY AND
CIA SAN JUAN S.A. DE PANAMA AND ALL FURTHER CONTRACTS
...HAVE NO VALIDITY NOR LEGAL EFFECT FOR THE PERUVIAN
STATE, NOR FOR THE CORP. DE SANTA OR ITS LEGAL SUCCESSORS,
BECAUSE THEY ARE INJURIOUS TO THE NATIONAL INTEREST.
THE SALE OF IRON MINERAL PRODUCTS WILL BE ASSUMED BY
MINPECO.

ART. 10. ...THE BANKING ACCOUNTS OF MARCONA MINING
COMPANY.. ARE HEREBY FROZEN, WITHOUT PREVIOUS NOTICE,
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OR OTHER PROCESS, AND THE BANKS OF THE REPUBLIC WILL
IMMEDIATELY PROCEED TO OPEN NEW ACCOUNTS IN THE NAME
OF HIERROPERU WITH THE CREDIT BALANCES WHICH PRESENTLY
EXIST IN THEM.

...THE TRANSFERRED CREDIT BALANCES WILL BE CONSIDERED
TO PAY FOR THE COSTS OF THE FINAL LIQUIDATION OF
THE EXPROPRIATION. ...

ART. 11. ...ALL OBLIGATIONS DUE TO MARCONA MINING
COMPANY ... WILL BE PAID TO HIERROPERU.

ART. 12. HEIRROPERU ...CAN PAY MARCONA MINING
COMPANY'S CREDITORS. HIERROPERU WILL ASSUME ...THE
SALARIES AND SOCIAL BENEFITS OF MARCONA'S WORKERS.

...THE AMOUNT OF CREDITS AND OBLIGATIONS ASSUMED
BY HIERROPERU IN CONFORMITY WITH THIS ARTICLE WILL BE
CONSIDERED IN PAYMENT OF THE FINAL LIQUIDATION COSTS OF
THE COMPANY.

ART. 13. (NOT RELEVANT.)

ART. 14. THE MINISTRY OF ENERGY AND MINES THROUGH
A SUPREME RESOLUTION AND AT THE REQUEST OF THE OFFICIAL
ADMINISTRATOR WILL INITIATE LEGAL PROCESSES WHICH MAY
BE CALLED FOR REGARDING JURIDICAL ACTS OF WHATEVER
TYPE WHICH, IN THE OPINION OF THE OFFICIAL ADMINISTRATOR,
MAY HAVE BEEN UNDERTAKEN UNDER CIRCUMSTANCES EVIDENTLY
INJURIOUS TO THE STATE OR CONTRARY TO THE NATIONALIZED
MINING-METALLURGICAL COMPLEX.

ART. 15, 16, AND 17. (NOT RELEVANT.)

ART. 18. THE MINISTRY OF ENERGY AND MINES WILL PROMULGATE SUPPLEMENTARY MEASURES TO FULFILL THE REQUIRMENTS OF THE PRESENT DECREE LAW AND WILL TAKE ADMINISTRATIVE MEASURES OR INITIATE APPROPRIATE LEGAL ACTION TO DETERMINE THE LIABILITIES OF THE MARCONA MINING COMPANY-PERUVIAN BRANCH AND ITS BONDING COMPANY (CO-SURETY). THE JUDGES WILL ORDER PREVENTIVE MEASURES WHICH ARE REQUESTED.
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(EL MINISTERIO DE ENERGIA Y MINAS DICTARA LAS MEDIDAS COMPLEMENTARIAS PARA EL CUMPLIMIENTO DE LO DISPUESTO EN EL PRESENTE DECTETO LEY A ADOPTARA LAS MEDIDAS ADMINISTRATIVAS O PROMOVERA LAS ACCIONES JUDICIALES CONVENIENTES PARA HACER EFECTIVAS LA SREPSONSABILIDADES CONTRA MARCONA MINING COMPANY, SUCURSAL EN PERU Y SU FIADORA SOLIDARIA. LOS JUECES DICTARA LAS MEDIDAS PRECAUTORIAS QUE SE LE SOLICITEN.)

...DONE IN GOVERNMENT HOUSE, IN LIMA, JULY 22,
1975, SIGNED DIVISION GENERAL EP, JUAN VELASCO ALBARADO,
PRESIDENT OF TYKIREL #

(NOTE: ALL THE MINISTERS ALSO SIGNED THE D.L)

2. EMBASSY POUCHING OFFICIAL TEXT OF D.L. TO ARA/LA-EP. COMMENT
FOLLOWS SEPTTEL.
DEAN
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